



U.S. Department of Justice

United States Attorney
District of Minnesota

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November 22, 2023

Heather Robertson
Assistant Minneapolis City Attorney
Minneapolis City Attorney's Office
City Hall, Room 210
350 South 5th Street
Minneapolis, MN 55415

RE: Subpoena in *Leask v. City of Minneapolis, et al.*
United States District Court Case No. 22-cv-2481-NEB-DTS

Dear Ms. Robertson:

Our office received your subpoena for documents and testimony on November 17, 2023. Please consider this letter our good-faith effort to resolve a potential discovery dispute.

Congress permitted federal agencies "to create rules governing discovery and disclosure" in The Housekeeping Act, 5 U.S.C. § 301, *et seq.* These regulations, known as *Touhy*¹ regulations, govern whether and to what extent a federal agency is authorized to disclose information requested in a subpoena under Rule 45. *See Elinsashar v. Speedway SuperAmerica, LLC*, 484 F.3d 1046, 1054 (8th Cir. 2007) (affirming denial of motion to compel FBI to respond to subpoena and upholding the validity of DOJ's *Touhy* regulation).

The U.S. Department of Justice's *Touhy* regulations require Department officials to make specific determinations about the appropriateness of disclosing information before those disclosures are authorized. *See* 28 C.F.R. § 16.21, *et seq.*

¹ *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

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The regulations require us to seek relief from the Court if the Department has not made its decision in the time required by the demand. 28 C.F.R. § 16.27. And, if the Court declines to grant us relief from the subpoena, we must respectfully refuse to comply with the demand. *Id.* § 16.28; *see also Touhy*, 340 U.S. at 470.

Your request and subpoena is being reviewed and will be referred for prompt consideration to the appropriate Department official according to these regulations. As we have previously discussed, this review will not be completed, and we will not be prepared to disclose documents or present testimony as requested in your subpoena by the December 1, 2023 deadline. We therefore request you withdraw the subpoena or amend it to provide the Department time to engage in this process. We request an additional 60 days to determine whether our office will make any disclosures in this case. Relatedly, unless the Court extends the December 1 fact-discovery deadline, we would also object to making disclosures after that deadline.

The Scheduling Order in this case requires us to make informal efforts to resolve these potential disputes before filing a formal motion, including by securing a conference call with Magistrate Judge Schultz. Please let me know by **Monday, November 27th** whether you will agree to withdraw or amend the subpoena, so that I can request dates for an informal conference call with Magistrate Judge Schultz, if necessary, to ensure that we have enough time to submit a formal motion for relief from the subpoena.

Sincerely,

/s/ Lucas B. Draisey

Lucas B. Draisey
Assistant U.S. Attorney

Cc: Ana Voss, Civil Chief, U.S. Attorney's Office